IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

JUDGMENT
IN
S.B. CRIMINAL APPEAL NO.504/2003

Munim @ Gordhan S/o Banya Kanjar
...Accused-Appellant
Versus
State of Rajasthan through Public Prosecutor
...Respondent

Date of Judgment ::: 22nd March, 2007

PRESENT
HON'BLE MR. JUSTICE NARENDRA KUMAR JAIN

Shri Harsh Saini, Advocate, for
Shri Sanjay Kumar Sharma, Counsel for the Accused-Appellant
Shri Jinendra Jain, P.P., for the State

By the Court:-

Accused-appellant Munim @ Gordhan S/o Banya Kanjar has preferred this appeal challenging the order of his conviction and sentence dated 26th of February, 2003, passed by the Sessions Judge, Jhalawar, in Criminal Case No.137/2002, whereby he was convicted and sentenced under Section 304-II, IPC, to five years rigorous imprisonment and a fine of Rs.3000/- (Rupees three thousand); in default of payment of fine, to further undergo three months rigorous imprisonment.

The learned counsel for the appellant Shri Harsh Saini, did not challenge the order of conviction

of the accused-appellant passed by the trial court, but his submission is that accused-appellant is in jail since 13th of June, 2002, and, as such, he has already undergone the sentence of imprisonment of four years nine months and ten days till now, therefore, his sentence of imprisonment may be reduced to a period of sentence of imprisonment already undergone by him.

I have considered the facts of the case as well as the finding of the trial court.

There are eye-witnesses in the case who have specifically stated before the trial court that accused Munim @ Gordhan inflicted injury on the person of deceased and, as per the medical evidence, the deceased died due to that injury.

PW-5 Sajni and PW-6 Leelabai, both, have stated that accused inflicted 'gandasi' blow on the person of deceased. PW-4 Kalawati Bai, the mother of the deceased, also corroborated the statements of PW-5 Sajni and PW-6 Leelabai. PW-3 Dr. Sunil Kumar Meena has proved the postmortem-report (Exhibit P-9) and contended that the deceased died due to the injury sustained by him.

In view of the above, I am satisfied that the learned trial court has rightly convicted the accused

for the above offence, and the learned counsel for the appellant is right in not pressing the appeal on merits.

So far as the argument regarding reduction of sentence of imprisonment is concerned, the accused-appellant has already remained in jail for about four years nine months and ten days, out of the total sentence of five years awarded by the trial court, therefore, after considering all the facts and circumstances of the case, I am inclined to accept the prayer of the learned counsel for the accused-appellant to reduce the sentence of imprisonment of the accused-appellant to a period of sentence of imprisonment already undergone by him.

Consequently, the appeal is partly allowed. The conviction of the accused-appellant under Section 304-II, IPC, is maintained, but his sentence of imprisonment is reduced to a period of sentence of imprisonment already undergone by him.

The accused-appellant be released forthwith, if his custody is not required in any other case.

(Narendra Kumar Jain) J.

//Jaiman//